

1                               IN THE UNITED STATES DISTRICT COURT  
2                               FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4       JUAN QUINTANILLA VASQUEZ, et  
5       al.,

6                               Plaintiffs,

7                               v.

8       LIBRE BY NEXUS, INC.,

9                               Defendant.

Case No. 17-cv-00755-CW

ORDER GRANTING PLAINTIFFS'  
MOTION FOR LEAVE TO FILE  
THIRD AMENDED COMPLAINT

(Docket No. 90)

10           Before the Court is a motion for leave to file their Third  
11 Amended Complaint (TAC) by Plaintiffs Juan Quintanilla Vasquez,  
12 Gabriela Perdomo Ortiz and Victor Hugo Catalan Molina. Docket  
13 No. 90. Defendant Libre By Nexus, Inc. (LBN) opposes the motion.  
14 Plaintiffs also seek judicial notice of six filings with the  
15 California Insurance Commissioner and the Federal District Court,  
16 Central District of California in support of their Reply; this  
17 request is unopposed. Having considered the papers, the Court  
18 GRANTS Plaintiffs' motion for leave to file their TAC. The Court  
19 also GRANTS Plaintiffs' Request for Judicial Notice.

20                               BACKGROUND

21           Count III of the Second Amended Complaint (SAC) alleges  
22 Defendant violated the "unlawful" prong of California's Unlawful  
23 Competition Law (UCL) by violating California's Insurance Code §  
24 1800, which prohibits a person from executing or delivering the  
25 undertaking of bail or bail bonds without a bail license.  
26 Plaintiffs now seek to amend Count III to include a violation of  
27 California Code Regulation Title 10, § 2081, a regulation  
28

1 promulgated by the Insurance Commissioner pursuant to the  
2 Insurance Code, and limits bail licensees from charging or  
3 collecting money or other valuable considerations except for a  
4 number of specified limited purposes.

5  
6 LEGAL STANDARD

7 Federal Rule of Civil Procedure 15(a) provides that leave of  
8 the court allowing a party to amend its pleading "shall be freely  
9 given when justice so requires." Because "Rule 15 favors a  
10 liberal policy towards amendment, the nonmoving party bears the  
11 burden of demonstrating why leave to amend should not be  
12 granted." Genentech, Inc. v. Abbott Laboratories, 127 F.R.D.  
13 529, 530-531 (N.D. Cal. 1989).

14 Courts consider five factors when assessing a motion for  
15 leave to amend: undue delay, bad faith, futility of amendment,  
16 prejudice to the opposing party and whether the plaintiff has  
17 previously amended the complaint. Ahlmeier v. Nev. Sys. of  
18 Higher Educ., 555 F.3d 1051, 1055 n.3 (9th Cir.2009). Leave to  
19 amend should be granted with "extreme liberality." DCD Programs,  
20 Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir. 1987). The Ninth  
21 Circuit has held that courts may decline to grant leave to amend  
22 for one or more of these reasons "only if there is strong  
23 evidence." Sonoma Cnty Ass'n of Retired Employees v. Sonoma  
24 Cnty, 708 F.3d 1109, 1117 (9th Cir. 2013).

25 DISCUSSION

26 Weighing these factors, the Court finds that LBN has not met  
27 its burden showing why leave to amend should be denied. LBN has  
28 shown that Plaintiffs could have sought amendment of their UCL

1 count earlier, and indeed had opportunities to include the new  
2 allegation in their prior amended complaints. However, undue  
3 delay by itself is not sufficient to deny leave to amend.  
4 Johnson v. Serenity Transp., Inc., 15-cv-02004-JSC, 2015 WL  
5 4913266, at \*3 (N.D. Cal. Aug. 17, 2015) (granting leave to amend  
6 because "the only factor that weighs in favor of denial is undue  
7 delay"); but see id. ("While delay alone is insufficient to  
8 justify denial of leave to amend, late amendments to assert new  
9 theories are not reviewed favorably when the facts and the theory  
10 have been known to the party seeking amendment since the  
11 inception of the cause of action.") (internal citations and  
12 quotations omitted). LBN has not shown that the other factors  
13 tip in favor of denying leave to amend. LBN argues that  
14 Plaintiffs' amendment is futile, contending for the first time  
15 that the Insurance Code provision for bail licensees does not  
16 apply to immigration bail bonds. LBN's cited authority, an  
17 opinion issued by the California Office of the Attorney General,  
18 is inapplicable. At issue in the opinion was whether Insurance  
19 Code §§ 1800 and 1801 gave licensed bail agents authority to  
20 issue immigration bonds. 63 Cal. Op. Att'y Gen. 265, 1980 WL  
21 96834, at \*4 (1980). The opinion held that the Insurance Code  
22 does not, in itself, authorize a licensed bail agent to execute  
23 immigration bonds, but explicitly stated that licensed bail  
24 bondsmen under Insurance Code § 1800 could seek authority through  
25 additional licenses. The opinion did not address whether the  
26 Insurance Code precludes the regulation of immigration bonds.  
27 Id. Indeed, the Insurance Commissioner and California's  
28 Department of Insurance have asserted jurisdiction over

1 regulating immigration bonds and immigration bond agents. See  
2 Docket No. 99-1 (Plaintiffs' RJN), Exs. 2-6 (order by the  
3 Insurance Commissioner and accusations by California's Department  
4 of Insurance relating to immigration bonds and purportedly  
5 unlicensed immigration bondsmen). LBN's futility argument would  
6 apply to the entirety of Count III and not only Plaintiffs' new  
7 proposed amendment. LBN did not raise this argument in its  
8 Motion to Dismiss. There is no indication that Plaintiffs are  
9 acting in bad faith.

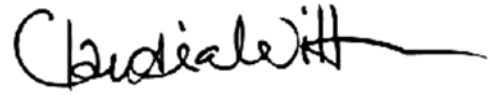
10 LBN will not be unduly prejudiced if leave to amend is  
11 granted. This new theory proposed by Plaintiffs arises from the  
12 same set of facts and within the scope of Plaintiffs' original  
13 theory under Count III. Additional discovery, if any, would be  
14 minimal. Discovery is currently ongoing. See Eminence Capital,  
15 LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) ("Absent  
16 prejudice, or a strong showing of any of the  
17 remaining . . . factors, there exists a presumption under Rule  
18 15(a) in favor of granting leave to amend.") (internal citations  
19 and emphasis omitted). For the foregoing reasons, the Court  
20 GRANTS Plaintiffs leave to file their TAC. Plaintiffs have seven  
21 days from the date of this Order to file their TAC. Defendant  
22 need not file a new Answer.

23 Plaintiffs' unopposed request for judicial notice of six  
24 documents filed with the California Insurance Commissioner and  
25 the Federal District Court, Central District of California is  
26 GRANTED because they are all public records. Fed. R. Evid. §  
27 201; see also In re Icenhower, 755 F.3d 1130, 1142 (9th Cir.  
28 2014).

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IT IS SO ORDERED.

Dated: December 3, 2018



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CLAUDIA WILKEN

United States District Judge